



**BENCHMARK
COMMUNICATIONS
CORPORATION**

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JUN 30 1994

June 28, 1994

Mr. William S. Saton
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Re: MM Docket No. 94-47
Chatom, AL, FM Proceeding

Dear Mr. Saton:

Transmitted herewith, original and six copies on behalf of Benchmark Communications Corp., is its "Petition For Leave To Amend" in the above-referenced proceeding.

If there are any questions concerning this matter, kindly communicate directly with this office.

Very truly yours,

Raymond Meyers
President/Director

Enclosures (7)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of) MM DOCKET NO. 94-47
)
BENCHMARK COMMUNICATIONS CORPORATION) File No. BPH-891228MT
)
)
For Construction Permit for a New)
FM Station on Channel 291C3)
in Chatom, Alabama)

To: The Honorable Edward Luton
Administrative Law Judge

PETITION FOR LEAVE TO AMEND

Benchmark Communications Corp. ("Benchmark"), hereby respectfully petitions, pursuant to Sections 1.65 and 73.3522(b)(1) of the Commission's Rules, for leave to amend its above-referenced application for a new FM station at Chatom, Alabama, to include two amendments. In support, the following is submitted:

1. The first amendment, copies of which are attached hereto, (Ex-1) are submitted to comply with section 1.65 of the Commission's Rules and pursuant to Section 73.3522(b) of the Rules. It reports information concerning the broadcast interests of the corporation since the initial filing.

2. The second amendment, copies of which are attached hereto, (Ex-2) are submitted to comply with Section 1.65 of the Commission's Rules and pursuant to Section 73.3522(b) of the Rules and in compliance with PST Bulletin No. 65, October 1985 entitled "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation." It will serve to modify Benchmark's engineering statement.

3. These amendments address two issues raised in the Hearing Designation Order (MM Docket No. 94-47), and brought to the applicant's attention on issue of that order.


4. These amendments will not delay this proceeding or require an enlargement of the issues or the addition of new parties to this proceeding. In addition, Benchmark is not seeking an advantage from the facts reported in the amendments.

5. No party will be unfairly prejudiced by the acceptance of these amendments, and no disruption of the administrative process will occur. Accordingly, Benchmark has demonstrated, the requirements of good cause under Section 73.3522(b) has been met and the amendments should be accepted.

WHEREFORE, the premises considered, Benchmark respectfully requests that it be granted leave to amend its application as set forth in the Exhibits hereto.

Respectfully submitted,

Benchmark Communications Corp.



John Raymond Meyers
President/Director

June 28, 1994

Exhibit 1

AMENDMENT


The application of Benchmark Commincations Corp., for authority to construct a new FM Broadcast station at Chatom, Alabama, is hereby amended to report in revised Exhibit I that on May 4, 1989, Benchmark tendered an application for authority to construct a new FM station at Highlands, North Carolina (BPH-890504ME). Benchmark's application was mutually exclusive with two other applicants for the same facilities, Mountain-High Broadcasters Inc., (BPH-890426MH) and Charisma Radio Corp., (BPH-890504MA).

On January 2, 1991, a Hearing Designation Order (DA 90-1604) was issued as MM Docket 90-540. Benchmark attempted to reach a pre-hearing settlement with the other applicants however when they expressed no interest, Benchmark requested the commission to dismiss its application which it did with prejudice.

However, the HDO had specified issues that would be raised concerning Benchmark's character as a result of its activity in Chatom, Alabama. When Benchmark withdrew, it left these issues unresolved (Amendment Exhibit 1a).

On May 28, 1993, Benchmark in behalf of Gordon Earls Radio, Inc., licensee of WBCA-AM, Bay Minette, Alabama, filed an application (BAL-930528EA) for a transfer of assets to Benchmark. However, on June 11, 1993, Gordon Earls Radio, Inc., by letter to the Commission withdrew the application before it was processed. No explanation of this action was delivered to Benchmark. Again, since no action was taken, Benchmark's issues remain unresolved.

Benchmark Communications Corp.



John Raymond Meyers
President/Director

Date: June 28, 1994

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-540

In re Applications of

MOUNTAIN-HIGH BROADCASTERS, INC. (hereafter "Broadcasters") File No. BPH-890426MH

CHARISMA RADIO CORP. (hereafter "Charisma") File No. BPH-890504MA

BENCHMARK COMMUNICATIONS CORPORATION (hereafter "Benchmark") File No. BPH-890504ME

For Construction Permit
for a New FM Station on Channel 283A
in Highlands, North Carolina

HEARING DESIGNATION ORDER

Adopted: October 26, 1990; Released: January 2, 1991

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Benchmark*. Information before us indicates apparent misrepresentations by Benchmark to the Commission. Specifically, on March 25, 1988, Benchmark filed an application for extension of time to construct Station WCCJ(FM) at Chatom, Alabama. In a *Letter to Benchmark Communications Corporation from Larry D. Eads*, 8920-MW (January 19, 1989), Benchmark's request for extension of its construction permit was denied. Mr. Eads, Chief, Audio Services Division stated, in pertinent part:

We must also point out, however, that there appear to be several misrepresentations with respect to construction progress made by Benchmark in this case. Specifically, while Benchmark claimed in its March 25 application that tower and mobile home to be used for studios and offices were on site with equipment installation progressing, these statements appear to be untrue. There is still no tower at the site, and no trailer arrived at least until (by Benchmark's own admission) May 16, 1988. Additionally, Benchmark claimed that the power company had begun

installing a service line to the site, when no such line was in place yet, over nine months after the claim was made. We remind Benchmark that truthfulness is a key element of character necessary to operate a broadcast station in the public interest. *See In the Matter of Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179 (1986); *recon. granted in part*, 1 FCC Rcd 421 (1986). *See also FCC v. WOKO*, 329 U.S. 223 (1946), and *Leflore Broadcasting Company, Inc. v. FCC*, 636 F.2d 454 (D.C. Cir. 1980). However, given the denial of the subject extension application and consequent cancellation of the WCCJ(FM) construction permit, we do not believe that further action is warranted at this time.

Accordingly, an appropriate issue will be specified in this proceeding.

3. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

4. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

5. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1.
 - (a) To determine in connection with the matters discussed in paragraph two, above, whether Benchmark made misrepresentations to the Commission, was lacking in candor in its dealings with the Commission or attempted to deceive or mislead the Commission;
 - (b) To determine, in light of the evidence adduced pursuant to issue (a) above, whether Benchmark possesses the basic qualifications to be a Commission licensee.
2. To determine which of the proposals would, on a comparative basis, best serve the public interest.
3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

6. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be ad-

dressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

7. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

8. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

EXHIBIT I

Sect. II, Para. 7

Benchmark Comm. Corp.

BROADCAST INTERESTS

John Raymond Meyers, Earl Lyle Miller, Nancy B. Miller and Clarence R. Brelsford are Officers and Directors of Benchmark Communications Corp. Benchmark Communications Corp., and its President, John Raymond Meyers were principles in Key Largo Broadcasters which filed for 103.9 MHz (Ch. 280A) at Key Largo, Florida, File Number BPH-830725AG. After designation for hearing, Key Largo Broadcasters voluntarily withdrew its application in order to pursue other broadcast opportunities.

Benchmark Communications Corp., was granted a Transfer of Ownership of a Construction Permit for a new FM station at Chatam, Alabama, file number BPH-840423ID from Rose Fuss to Benchmark Communications Corp. Unable to complete construction before its last permit expired Benchmark filed for a extension to its construction permit in a timely manner. However certain events that were to have taken place between the time the filing was prepared and filed and the end of the existing construction permit failed to materialize. A party disinterested in the existing authorization but mutually exclusive to an up-grade request for this facility alleged that a misrepresentation had occurred when Benchmark indicated that events reported in its application for additional time had taken place when they had not. Benchmark believed these events would be completed by the

end of the existing construction period. When they were not as reported, Benchmark immediately filed an ammended application for additional time to construct and stated the nature of the discrepancy and the steps it took to correct them.

Without reaching the allegations of misrepresentation, the Commission denied the extension application for lack of adequate construction progress. Benchmark has requested reconsideration of that action.

Benchmark Communications Corp., was a limited partner to an application for a new FM at Gulf Breeze, Florida, Channel 237A as Gulf Breeze Wireless Co., Ltd., in which Clarence Brelsford's daughter-in-law, Barbara Brelsford was the General Partner and his Son, Michael Brelsford was a Limited Partner. File number was BPH-850301MB. After designation for hearing Gulf Breeze Wireless Co.,Ltd.'s application dismissed with prejudice by the Administrative Law Judge and returned.

In 1985, Benchmark Communication Corp., filed an application for a new FM at Marco, Florida. The application was deamed incomplete by the Commission and was returned.

On May 2, 1989, Benchmark Communications Corp., filed an application for a new FM at Highlands, North Carolina, on channel 283 (104.5MHz). The application was accepted for filing and a reference number (890504ME) was issued.

Mr. Meyers previously held an interest in an application for new FM facilities at Hollywood, Florida. To his knowledge and belief, the applicant was Hollywood Hi-Fi Broadcasters, his interest was 20%, and the application was dismissed in a settlement with a competing applicant for the same facilities.

Also Mr. Meyers is employed as a staff engineer with the Dade County Public Schools, licensee of noncommercial educational stations WLRN(FM) and WLRN(TV), Miami Florida, and has held that position from February, 1981, to the present.

Earl Lyle Miller, is chief engineer of Summit Radio Corporation, licensee of Station WAKC(TV), Akron, Ohio, and has held that position from October, 1979, to the present.

Nancy B. Miller and Clarence R. Brelsford have no other Broadcast interests.

Exhibit 2

AMENDMENT

The application of Benchmark Communcations Corp., for authority to construct a new FM Broadcast station at Chatom, Alabama, is hereby amended to report in revised Exhibit E-10 as new paragraph 12 and as a new last paragraph to Benchmark's ammended BPH-891228MT engineering dated September 19, 1990, Exhibit #8 (see ammendment exhibit 2a and 2b which are copies of the original applications), "the permittee/licensee will and must reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency radiation in excess of FCC guidelines pursuant to PST Bulletin No.65, October 1985, entitled 'Evaluating Compliance with FCC-specified Guildlines for Human Exposure to Radiofrequency Radiation'."

Benchmark Communications Corp.



John Raymond Meyers
President/Director

Date: June 28, 1994

ENVIRONMENTAL IMPACT STATEMENT

In accordance with the provisions of 47 CFR Sect. 1.1301 et seq., of the Rules and Regulations of the Federal Communications Commission, the applicant has analyzed this application and determined that issuance of a Construction Permit at the proposed site will not constitute a Major Environmental Action, determined as follows:

- 1) The overall height above ground of the antenna tower and supporting structure does not exceed 100 meters.
- 2) The proposed site is not within an officially designated wilderness area, or in an area where designation as a wilderness area is pending consideration.
- 3) The proposed site is not located in an officially designated wildlife preserve or in an area where designation as a wildlife preserve is pending.
- 4) The proposed site is not located in an area which will affect districts, sites, buildings, structures or objects, significant in American History, architecture, archeology or culture, which are listed in the National Register of Historic Places or eligible for such listing.
- 5) The proposed site is not located in an area which is recognized either nationally or locally for its special scenic or recreational value.
- 6) The proposed site is not located in a floodplain.
- 7) Construction of the tower at the proposed site will not involve any extensive change in surface features (e.g. wetland fill, deforestation or other diversion).
- 8) Other than the tower itself, the only other construction required will be that of a small building near the base of the tower, designed to house the transmitter and associated equipment.
- 9) The proposed tower site is located in a sparsely populated rural area and is not expected to be the subject of any local controversy concerning its construction.
- 10) High intensity strobe lighting is NOT proposed.
- 11) Non-ionizing radiation from the site will not exceed levels established by the American National Standards Institute (ANSI), "American National Standards Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300KHz to 100 GHz," (ANSI C95.1-1982).

AMEND BPH-891228MT
BENCHMARK COMMUNICATIONS CORP.
WCCJ-FM RADIO STATION
CH 291C3 - 106.1 MHZ - 25 KW
CHATOM, ALABAMA
September 1990

Exhibit # 8

Radiofrequency Radiation Study

This Radiofrequency Radiation Study was conducted to determine if the proposed Benchmark Communication Corp. antenna system is believed to be in compliance with OST Bulletin, Number 65, dated October 1985.

The proposed directional, seven-bay antenna system will be mounted with its center of radiation 39.825 meters (130.7 feet) above the ground at the antenna site. The lowest bay of the system is 30.68 meters (100.6 feet) above the ground. The antenna system will be operated with 25 kilowatts horizontal and vertical power. Using the vertical field elevation pattern provided by the antenna manufacturer, which is attached to this application as Exhibit #2C, the worst case amount of power being delivered by the antenna in an area between 45° and 90° from the antenna system in a downward direction would be a relative field value of 0.252. The antenna operating with 25 kilowatts, where the relative field equals 1.0, would only be producing 1.59 kilowatts of horizontal and vertical power between 45° and 90° in a downward direction off of the antenna system.

June 28, 1994

Based on this amount of power and a height of 30.68 meters above the ground on the lowest antenna bay, only 0.1292 mw or 12.9% of the ANSI limit is being delivered at two meters above the ground at the base of the tower. Therefore, this antenna system is believed to be in compliance with OST Bulletin, Number 65, as is required by the Commission.

Additionally, Benchmark will install appropriate warning signs at the site to warn of potential RF radiation hazards in the area around the tower. Further, the only access road to this site will be gated and warning signs installed to prevent casual trespass at the antenna site. The site is located in a remote area.

CERTIFICATE OF SERVICE

I, John Raymond Meyers, President/ Director of Benchmark Communications Corp., hereby certify that I have on the 28th day of June, 1994, sent copies of the foregoing "PETITION FOR LEAVE TO AMEND" by first-class United States mail, postage prepaid to the following:

The Honorable Edward Luton
Administrative Law Judge
Federal Communications Commission
Room 221
2000 L Street, N.W.
Washington, D.C. 20554

Jim Shook, Esq.
Federal Communications Commission
2025 M Street, N.W.
Washington, D.C. 20554
(Counsel for Chief, Mass Media Bureau)


John Raymond Meyers